

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT REDENSKI and ELLEN REDENSKI	:	
Plaintiffs	:	No. 17-CV-1119-JMM
	:	
v.	:	
	:	
AMOS FINANCIAL, LLC	:	
Defendant	:	

**DEFENDANT’S BRIEF IN OPPOSITION TO THE PLAINTIFF’S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

The Plaintiffs’ contention is that the Note, as modified, calls for their monthly mortgage payments to be applied pursuant to a pre-computed schedule of payments. For loans where payments are applied on a scheduled monthly installment basis, the payments are applied per the schedule. There would be a pre-set amount to be applied against principal and a pre-set amount to be applied against principal for each of the three hundred sixty (360) payments due under the Note no matter when they were made or received.

However, the terms of the Note contradict Plaintiffs’ interpretation. The Note provides, in pertinent part:

3. Payments

(A) ... Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on September 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the “Maturity Date.” ...

The Note provides that payments will be applied to interest before principal. This provision of the Note is inconsistent with Plaintiff’s suggested interpretation of the Note. If all payments were intended to be applied per a pre-computed schedule, there would be no necessity for the Note

to direct how payments were to be applied other than to say that payments should be applied per the schedule.

The Plaintiffs' have focused on the phrase "applied as of its scheduled due date" to bolster their contention that the loan payments were applied incorrectly. This argument ignores the fact that the date of application and the manner of application are different concepts. Further, the note does not unambiguously state that payments were to be applied on a scheduled monthly installment basis.

In any event, the Loan Modification Agreement further contradicts the Plaintiffs' interpretation. The Loan Modification dated April 15, 2014, provides in pertinent part:

2. Borrower promises to pay the Interest Bearing Unpaid Principal Balance, plus interest, to the order of Lender. Interest will be charged on the Interest Bearing Unpaid Principal Balance at the yearly rate of **7.000%**, from **April 1, 2014** with a first payment starting on **May 1, 2014**, and continuing thereafter on the same day of each succeeding month until principal and interest are paid in full. ...

There is no mention of a "schedule" and no direction that payments are to be applied on a scheduled monthly installment basis.

Respectfully Submitted,

/s/ Erik M. Helbing

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CERTIFICATE OF SERVICE

I, the undersigned, counsel for Plaintiff hereby certify that I served a copy of the within Defendant's Brief in Opposition to the Plaintiff's Statement of Undisputed Material Facts in Support of Their Motion for Partial Summary Judgment on counsel for Plaintiff by first class on July 16, 2018 to the following address:

Sean P. Mays, Esq.
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Respectfully Submitted,

Dated: July 16, 2018

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